

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Case No.: 13CR3921-BEN
)
Plaintiff,) FINDINGS AND RECOMMENDATION
) OF THE MAGISTRATE JUDGE
v.) UPON A PLEA OF GUILTY
)
MICHAEL LUSTIG,)
)
)
Defendant.)

Upon Defendant's request to enter a guilty plea to Count ONE, TWO, AND THREE of the SUPERSEDING INFORMATION pursuant to Rule 11 of the Federal Rules of Criminal Procedure, this matter was referred to the Magistrate Judge by the District Judge, with the written consents of the Defendant, counsel for the Defendant, and counsel for the United States.

Thereafter, the matter came on for a hearing on Defendant's guilty plea, in full compliance with Rule 11, Federal Rules of Criminal Procedure, before the Magistrate Judge, in open court and on the record.

1 In consideration of that hearing and the allocution
2 made by the Defendant under oath on the record and in
3 the presence of counsel, and the remarks of the
4 Assistant United States Attorney,

5 **I make the following FINDINGS - that the Defendant**
6 **understands:**

- 7 1. The government's right, in a prosecution for
8 perjury or false statement, to use against the
9 defendant any statement that the defendant
10 gives under oath;
- 11 2. The right to persist in a plea of "not guilty";
- 12 3. The right to a speedy and public trial;
- 13 4. The right to trial by jury, or the ability to
14 waive that right and have a judge try the case
15 without a jury;
- 16 5. The right to be represented by counsel-and if
17 necessary to have the court appoint counsel-at
18 trial and at every other stage of the
19 proceeding;
- 20 6. The right at trial to confront and cross-
21 examine adverse witnesses, to be protected from
22 compelled self-incrimination, to testify and
23 present evidence, and to compel the attendance
24 of witnesses;
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- 1 7. The defendant's waiver of these trial rights if
- 2 the court accepts a guilty plea or nolo
- 3 contendere;
- 4 8. The nature of each charge to which the
- 5 defendant is pleading;
- 6 9. Any maximum possible penalty, including
- 7 imprisonment, fine, and term of supervised
- 8 release;
- 9 10. Any applicable mandatory minimum penalty;
- 10 11. Any applicable forfeiture;
- 11 12. The court's authority to order restitution;
- 12 13. The court's obligation to impose a special
- 13 assessment;
- 14 14. In determining a sentence, the court's
- 15 obligation to calculate the applicable
- 16 sentencing guideline range and to consider that
- 17 range, possible departures under the Sentencing
- 18 Guidelines, and other sentencing factors under
- 19 18 U.S.C § 3553(a);
- 20 21. The term of any plea agreement and any
- 21 provision in that agreement that waives the
- 22 right to appeal or to collaterally attack the
- 23 conviction and sentence; and
- 24 25. The term of any plea agreement and any
- 25 provision in that agreement that waives the
- 26 right to appeal or to collaterally attack the
- 27 conviction and sentence; and
- 28 28. The term of any plea agreement and any

1 16. That, if convicted, a defendant who is not a
2 United States citizen may be removed from the
3 United States, denied citizenship, and denied
4 admission to the United States in the future.

5 **I further find that:**
6

7 17. The defendant is competent to enter a plea;

8 18. The defendant's guilty plea is made knowingly
9 and voluntarily, and did not result from force,
10 threats or promises (other than those made in a
11 plea agreement); and
12

13 19. There is a factual basis for Defendant's plea.

14 **I therefore RECOMMEND that the District Judge**
15 **accept the Defendant's guilty plea to Count ONE, TWO,**
16 **AND THREE of the SUPERSEDING INFORMATION.**

17 The sentencing hearing will be before United States
18 **District Judge Roger T. Benitez, on 11/3/2014 at 9:00**
19 **AM.** The court excludes time from 7/31/2014 through
20 11/3/2014 pursuant to 18 USC § 3161(h)(1)(G) on the
21 ground that the District Judge will be considering the
22 proposed plea agreement.
23

24 Objections to these Findings and Recommendations
25 are waived by the parties if not made within 14 days of
26 this order. If the parties waive the preparation of the
27
28

1 Presentence Report, objections are due within three
2 days of this order.

3
4 Dated: 7/31/2014

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6 **Hon. Mitchell D. Dembin**
7 United States Magistrate Judge

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9 Copies to:
10 Judge Roger T. Benitez
11 Assistant United States Attorney
12 Counsel for Defendant
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